



Excise Tax Advisory

Excise Tax Advisories (ETAs) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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Foreign Trade Zones

Activities engaged in within an FTZ are subject to Washington state taxes in the same manner as if the FTZ did not exist. Federal law only preempts state and local property taxes on certain goods within an FTZ; it does not affect the imposition of other state taxes.

The Federal Foreign Trade Zones Act, 19 U.S.C. § 81a, *et seq.*, authorizes the establishment of foreign trade zones (FTZs). These are designated geographic areas that, for purposes of customs and tariff laws, are treated as if they were located outside of the United States. Businesses importing foreign goods, or remanufacturing foreign-made goods, may operate within an FTZ to realize substantial tax and duty benefits, including deferral or elimination of duties, inverted tariffs, and exemption from state and local property taxes. The Federal Foreign Trade Zones Act (19 U.S.C. 81o(e)) expressly preempts a state from imposing *ad valorem* taxes on foreign goods in an FTZ held for eventual import or export, or on domestic goods held for export.

However, the Act does not prohibit the state from imposing excise taxes on the activities of a taxpayer operating in an FTZ. Washington may impose tax as long as that taxpayer has established nexus with Washington and engages in activities subject to taxation in this state. In *Michigan Cannery & Freezers Assn., Inc. v. Agricultural Marketing and Bargaining Board*, 467 U.S. 461 (1984), the U.S. Supreme Court described the circumstances in which federal law preempts state law. They are: (1) express preemption; (2) occupying the entire field of regulation; and (3) actual conflict between federal and state law. The Federal Foreign Trade Zones Act does not preempt the state's authority to impose any state tax other than state property taxes as explicitly described under 19 U.S.C. 81o(e). The Act does not evidence any intent to occupy the entire field of regulating activities within an FTZ; in fact, 19 U.S.C. 81i expresses Congressional intent for federal authorities to cooperate with state governments. Moreover, the express preemption of certain *ad valorem* taxes indicates Congress's awareness that state taxes could otherwise apply to activities within an FTZ. Finally, aside from the express preemption of property taxes in certain circumstances, there is no actual conflict between the Act and application of state tax laws.
